



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
SB2337

Introduced 1/28/2004, by John J. Cullerton

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1095	from Ch. 34, par. 5-1095
65 ILCS 5/11-42-11	from Ch. 24, par. 11-42-11

Amends the Counties Code and the Illinois Municipal Code. Makes technical changes in Sections concerning community television systems.

LRB093 16091 MKM 41717 b

1 AN ACT concerning cable television.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Counties Code is amended by changing Section
5 5-1095 as follows:

6 (55 ILCS 5/5-1095) (from Ch. 34, par. 5-1095)

7 Sec. 5-1095. Community antenna television systems;
8 satellite transmitted television programming.

9 (a) The County Board may license, tax, or franchise the
10 business of operating a community antenna television system or
11 systems within the County and outside of a municipality, as
12 defined in Section 1-1-2 of the Illinois Municipal Code.

13 When an area is annexed to a municipality, the annexing
14 municipality becomes ~~shall thereby become~~ the franchising
15 authority with respect to that portion of any community antenna
16 television system that, immediately before annexation, had
17 provided cable television services within the annexed area
18 under a franchise granted by the county, and the owner of that
19 community antenna television system is authorized ~~shall~~
20 ~~thereby be authorized~~ to provide cable television services
21 within the annexed area under the terms and provisions of the
22 existing franchise. In that instance, the franchise shall
23 remain in effect until, by its terms, it expires, except that
24 any franchise fees payable under the franchise shall be payable
25 only to the county for a period of 5 years or until, by its
26 terms, the franchise expires, whichever occurs first. After the
27 5 year period, any franchise fees payable under the franchise
28 shall be paid to the annexing municipality. In any instance in
29 which a duly franchised community antenna television system is
30 providing cable television services within the annexing
31 municipality at the time of annexation, the annexing
32 municipality may permit that franchisee to extend its community

1 antenna television system to the annexed area under terms and
2 conditions that are no more burdensome nor less favorable to
3 that franchisee than those imposed under any community antenna
4 television franchise applicable to the annexed area at the time
5 of annexation. The authorization to extend cable television
6 service to the annexed area and any community antenna
7 television system authorized to provide cable television
8 services within the annexed area at the time of annexation
9 shall not be subject to the provisions of subsection (e) of
10 this Section.

11 (b) "Community antenna television system" as used in this
12 Section, means any facility which is constructed in whole or in
13 part in, on, under or over any highway or other public place
14 and which is operated to perform for hire the service of
15 receiving and amplifying the signals broadcast by one or more
16 television stations and redistributing such signals by wire,
17 cable or other means to members of the public who subscribe to
18 such service except that such term does not include (i) any
19 system which serves fewer than 50 subscribers or (ii) any
20 system which serves only the residents of one or more apartment
21 dwellings under common ownership, control or management, and
22 commercial establishments located on the premises of such
23 dwellings.

24 (c) The authority hereby granted does not include the
25 authority to license or franchise telephone companies subject
26 to the jurisdiction of the Illinois Commerce Commission or the
27 Federal Communications Commission in connection with
28 furnishing circuits, wires, cables or other facilities to the
29 operator of a community antenna television system.

30 The County Board may, in the course of franchising such
31 community antenna television system, grant to such franchisee
32 the authority and the right and permission to use all public
33 streets, rights of way, alleys, ways for public service
34 facilities, parks, playgrounds, school grounds, or other
35 public grounds, in which such county may have an interest, for
36 the construction, installation, operation, maintenance,

1 alteration, addition, extension or improvement of a community
2 antenna television system.

3 Any charge imposed by a community antenna television system
4 franchised pursuant to this Section for the raising or removal
5 of cables or lines to permit passage on, to or from a street
6 shall not exceed the reasonable costs of work reasonably
7 necessary to safely permit such passage. Pursuant to
8 subsections (h) and (i) of Section 6 of Article VII of the
9 Constitution of the State of Illinois, the General Assembly
10 declares the regulation of charges which may be imposed by
11 community antenna television systems for the raising or removal
12 of cables or lines to permit passage on, to or from streets is
13 a power or function to be exercised exclusively by the State
14 and not to be exercised or performed concurrently with the
15 State by any unit of local government, including any home rule
16 unit.

17 The County Board may, upon written request by the
18 franchisee of a community antenna television system, exercise
19 its right of eminent domain solely for the purpose of granting
20 an easement right no greater than 8 feet in width, extending no
21 greater than 8 feet from any lot line for the purpose of
22 extending cable across any parcel of property in the manner
23 provided for by the law of eminent domain, provided, however,
24 such franchisee deposits with the county sufficient security to
25 pay all costs incurred by the county in the exercise of its
26 right of eminent domain.

27 Except as specifically provided otherwise in this Section,
28 this Section is not a limitation on any home rule county.

29 (d) The General Assembly finds and declares that
30 satellite-transmitted television programming should be
31 available to those who desire to subscribe to such programming
32 and that decoding devices should be obtainable at reasonable
33 prices by those who are unable to obtain satellite-transmitted
34 television programming through duly franchised community
35 antenna television systems.

36 In any instance in which a person is unable to obtain

1 satellite-transmitted television programming through a duly
2 franchised community antenna television system either because
3 the municipality and county in which such person resides has
4 not granted a franchise to operate and maintain a community
5 antenna television system, or because the duly franchised
6 community antenna television system operator does not make
7 cable television services available to such person, any
8 programming company that delivers satellite-transmitted
9 television programming in scrambled or encrypted form shall
10 ensure that devices for decryption of such programming are made
11 available to such person, through the local community antenna
12 television operator or directly, for purchase or lease at
13 prices reasonably related to the cost of manufacture and
14 distribution of such devices.

15 (e) The General Assembly finds and declares that, in order
16 to ensure that community antenna television services are
17 provided in an orderly, competitive and economically sound
18 manner, the best interests of the public will be served by the
19 establishment of certain minimum standards and procedures for
20 the granting of additional cable television franchises.

21 Subject to the provisions of this subsection, the authority
22 granted under subsection (a) hereof shall include the authority
23 to license, franchise and tax more than one cable operator to
24 provide community antenna television services within the
25 territorial limits of a single franchising authority. For
26 purposes of this subsection (e), the term:

27 (i) "Existing cable television franchise" means a
28 community antenna television franchise granted by a county
29 which is in use at the time such county receives an
30 application or request by another cable operator for a
31 franchise to provide cable antenna television services
32 within all or any portion of the territorial area which is
33 or may be served under the existing cable television
34 franchise.

35 (ii) "Additional cable television franchise" means a
36 franchise pursuant to which community antenna television

1 services may be provided within the territorial areas, or
2 any portion thereof, which may be served under an existing
3 cable television franchise.

4 (iii) "Franchising Authority" is defined as that term
5 is defined under Section 602(9) of the Cable Communications
6 Policy Act of 1984, Public Law 98-549.

7 (iv) "Cable operator" is defined as that term is
8 defined under Section 602(4) of the Cable Communications
9 Policy Act of 1984, Public Law 98-549.

10 Before granting an additional cable television franchise,
11 the franchising authority shall:

12 (1) Give written notice to the owner or operator of any
13 other community antenna television system franchised to
14 serve all or any portion of the territorial area to be
15 served by such additional cable television franchise,
16 identifying the applicant for such additional franchise
17 and specifying the date, time and place at which the
18 franchising authority shall conduct public hearings to
19 consider and determine whether such additional cable
20 television franchise should be granted.

21 (2) Conduct a public hearing to determine the public
22 need for such additional cable television franchise, the
23 capacity of public rights-of-way to accommodate such
24 additional community antenna television services, the
25 potential disruption to existing users of public
26 rights-of-way to be used by such additional franchise
27 applicant to complete construction and to provide cable
28 television services within the proposed franchise area,
29 the long term economic impact of such additional cable
30 television system within the community, and such other
31 factors as the franchising authority shall deem
32 appropriate.

33 (3) Determine, based upon the foregoing factors,
34 whether it is in the best interest of the county to grant
35 such additional cable television franchise.

36 (4) If the franchising authority shall determine that

1 it is in the best interest of the county to do so, it may
2 grant the additional cable television franchise. Except as
3 provided in paragraph (5) of this subsection (e), no such
4 additional cable television franchise shall be granted
5 under terms or conditions more favorable or less burdensome
6 to the applicant than those required under the existing
7 cable television franchise, including but not limited to
8 terms and conditions pertaining to the territorial extent
9 of the franchise, system design, technical performance
10 standards, construction schedules, performance bonds,
11 standards for construction and installation of cable
12 television facilities, service to subscribers, public
13 educational and governmental access channels and
14 programming, production assistance, liability and
15 indemnification, and franchise fees.

16 (5) Unless the existing cable television franchise
17 provides that any additional cable television franchise
18 shall be subject to the same terms or substantially
19 equivalent terms and conditions as those of the existing
20 cable television franchise, the franchising authority may
21 grant an additional cable television franchise under
22 different terms and conditions than those of the existing
23 franchise, in which event the franchising authority shall
24 enter into good faith negotiations with the existing
25 franchisee and shall, within 120 days after the effective
26 date of the additional cable television franchise, modify
27 the existing cable television franchise in a manner and to
28 the extent necessary to ensure that neither the existing
29 cable television franchise nor the additional cable
30 television franchise, each considered in its entirety,
31 provides a competitive advantage over the other, provided
32 that prior to modifying the existing cable television
33 franchise, the franchising authority shall have conducted
34 a public hearing to consider the proposed modification. No
35 modification in the terms and conditions of the existing
36 cable television franchise shall oblige the existing cable

1 television franchisee (1) to make any additional payment to
2 the franchising authority, including the payment of any
3 additional franchise fee, (2) to engage in any additional
4 construction of the existing cable television system or,
5 (3) to modify the specifications or design of the existing
6 cable television system; and the inclusion of the factors
7 identified in items (2) and (3) shall not be considered in
8 determining whether either franchise considered in its
9 entirety, has a competitive advantage over the other except
10 to the extent that the additional franchisee provides
11 additional video or data services or the equipment or
12 facilities necessary to generate and or carry such service.
13 No modification in the terms and conditions of the existing
14 cable television franchise shall be made if the existing
15 cable television franchisee elects to continue to operate
16 under all terms and conditions of the existing franchise.

17 If within the 120 day period the franchising authority
18 and the existing cable television franchisee are unable to
19 reach agreement on modifications to the existing cable
20 television franchise, then the franchising authority shall
21 modify the existing cable television franchise, effective
22 45 days thereafter, in a manner, and only to the extent,
23 that the terms and conditions of the existing cable
24 television franchise shall no longer impose any duty or
25 obligation on the existing franchisee which is not also
26 imposed under the additional cable television franchise;
27 however, if by the modification the existing cable
28 television franchisee is relieved of duties or obligations
29 not imposed under the additional cable television
30 franchise, then within the same 45 days and following a
31 public hearing concerning modification of the additional
32 cable television franchise within that 45 day period, the
33 franchising authority shall modify the additional cable
34 television franchise to the extent necessary to insure that
35 neither the existing cable television franchise nor the
36 additional cable television franchise, each considered in

1 its entirety, shall have a competitive advantage over the
2 other.

3 No county shall be subject to suit for damages based upon
4 the county's determination to grant or its refusal to grant an
5 additional cable television franchise, provided that a public
6 hearing as herein provided has been held and the franchising
7 authority has determined that it is in the best interest of the
8 county to grant or refuse to grant such additional franchise,
9 as the case may be.

10 It is declared to be the law of this State, pursuant to
11 paragraphs (h) and (i) of Section 6 of Article VII of the
12 Illinois Constitution, that the establishment of minimum
13 standards and procedures for the granting of additional cable
14 television franchises as provided in this subsection (e) is an
15 exclusive State power and function that may not be exercised
16 concurrently by a home rule unit.

17 (Source: P.A. 90-14, eff. 7-1-97; 90-285, eff. 7-31-97.)

18 Section 10. The Illinois Municipal Code is amended by
19 changing Section 11-42-11 as follows:

20 (65 ILCS 5/11-42-11) (from Ch. 24, par. 11-42-11)

21 Sec. 11-42-11. Community antenna television systems;
22 satellite transmitted television programming. (a) The
23 corporate authorities of each municipality may license,
24 franchise, and tax the business of operating a community
25 antenna television system as ~~hereinafter~~ defined in this
26 Section. In municipalities with less than 2,000,000
27 inhabitants, the corporate authorities may, under the limited
28 circumstances set forth in this Section, own (or lease as
29 lessee) and operate a community antenna television system;
30 provided that a municipality may not acquire, construct, own,
31 or operate a community antenna television system for the use or
32 benefit of private consumers or users, and may not charge a fee
33 for that consumption or use, unless the proposition to acquire,
34 construct, own, or operate a cable antenna television system

1 has been submitted to and approved by the electors of the
2 municipality in accordance with subsection (f). Before
3 acquiring, constructing, or commencing operation of a
4 community antenna television system, the municipality shall
5 comply with the following:

6 (1) Give written notice to the owner or operator of any
7 other community antenna television system franchised to
8 serve all or any portion of the territorial area to be
9 served by the municipality's community antenna television
10 system, specifying the date, time, and place at which the
11 municipality shall conduct public hearings to consider and
12 determine whether the municipality should acquire,
13 construct, or commence operation of a community antenna
14 television system. The public hearings shall be conducted
15 at least 14 days after this notice is given.

16 (2) Publish a notice of the hearing in 2 or more
17 newspapers published in the county, city, village,
18 incorporated town, or town, as the case may be. If there is
19 no such newspaper, then notice shall be published in any 2
20 or more newspapers published in the county and having a
21 general circulation throughout the community. The public
22 hearings shall be conducted at least 14 days after this
23 notice is given.

24 (3) Conduct a public hearing to determine the means by
25 which construction, maintenance, and operation of the
26 system will be financed, including whether the use of tax
27 revenues or other fees will be required.

28 (b) The words "community antenna television system" shall
29 mean any facility which is constructed in whole or in part in,
30 on, under or over any highway or other public place and which
31 is operated to perform for hire the service of receiving and
32 amplifying the signals broadcast by one or more television
33 stations and redistributing such signals by wire, cable or
34 other means to members of the public who subscribe to such
35 service; except that such definition shall not include (i) any
36 system which serves fewer than fifty subscribers, or (ii) any

1 system which serves only the residents of one or more apartment
2 dwellings under common ownership, control or management, and
3 commercial establishments located on the premises of such
4 dwellings.

5 (c) The authority hereby granted does not include authority
6 to license, franchise or tax telephone companies subject to
7 jurisdiction of the Illinois Commerce Commission or the Federal
8 Communications Commission in connection with the furnishing of
9 circuits, wires, cables, and other facilities to the operator
10 of a community antenna television system.

11 The corporate authorities of each municipality may, in the
12 course of franchising such community antenna television
13 system, grant to such franchisee the authority and the right
14 and permission to use all public streets, rights of way,
15 alleys, ways for public service facilities, parks,
16 playgrounds, school grounds, or other public grounds, in which
17 such municipality may have an interest, for the construction,
18 installation, operation, maintenance, alteration, addition,
19 extension or improvement of a community antenna television
20 system.

21 Any charge imposed by a community antenna television system
22 franchised pursuant to this Section for the raising or removal
23 of cables or lines to permit passage on, to or from a street
24 shall not exceed the reasonable costs of work reasonably
25 necessary to safely permit such passage. Pursuant to
26 subsections (h) and (i) of Section 6 of Article VII of the
27 Constitution of the State of Illinois, the General Assembly
28 declares the regulation of charges which may be imposed by
29 community antenna television systems for the raising or removal
30 of cables or lines to permit passage on, to or from streets is
31 a power or function to be exercised exclusively by the State
32 and not to be exercised or performed concurrently with the
33 State by any unit of local government, including any home rule
34 unit.

35 The municipality may, upon written request by the
36 franchisee of a community antenna television system, exercise

1 its right of eminent domain solely for the purpose of granting
2 an easement right no greater than 8 feet in width, extending no
3 greater than 8 feet from any lot line for the purpose of
4 extending cable across any parcel of property in the manner
5 provided by the law of eminent domain, provided, however, such
6 franchisee deposits with the municipality sufficient security
7 to pay all costs incurred by the municipality in the exercise
8 of its right of eminent domain.

9 (d) The General Assembly finds and declares that
10 satellite-transmitted television programming should be
11 available to those who desire to subscribe to such programming
12 and that decoding devices should be obtainable at reasonable
13 prices by those who are unable to obtain satellite-transmitted
14 television programming through duly franchised community
15 antenna television systems.

16 In any instance in which a person is unable to obtain
17 satellite-transmitted television programming through a duly
18 franchised community antenna television system either because
19 the municipality and county in which such person resides has
20 not granted a franchise to operate and maintain a community
21 antenna television system, or because the duly franchised
22 community antenna television system operator does not make
23 cable television services available to such person, any
24 programming company that delivers satellite-transmitted
25 television programming in scrambled or encrypted form shall
26 ensure that devices for description of such programming are
27 made available to such person, through the local community
28 antenna television operator or directly, for purchase or lease
29 at prices reasonably related to the cost of manufacture and
30 distribution of such devices.

31 (e) The General Assembly finds and declares that, in order
32 to ensure that community antenna television services are
33 provided in an orderly, competitive and economically sound
34 manner, the best interests of the public will be served by the
35 establishment of certain minimum standards and procedures for
36 the granting of additional cable television franchises.

1 Subject to the provisions of this subsection, the authority
2 granted under subsection (a) hereof shall include the authority
3 to license, franchise and tax more than one cable operator to
4 provide community antenna television services within the
5 corporate limits of a single franchising authority. For
6 purposes of this subsection (e), the term:

7 (i) "Existing cable television franchise" means a
8 community antenna television franchise granted by a
9 municipality which is in use at the time such municipality
10 receives an application or request by another cable
11 operator for a franchise to provide cable antenna
12 television services within all or any portion of the
13 territorial area which is or may be served under the
14 existing cable television franchise.

15 (ii) "Additional cable television franchise" means a
16 franchise pursuant to which community antenna television
17 services may be provided within the territorial areas, or
18 any portion thereof, which may be served under an existing
19 cable television franchise.

20 (iii) "Franchising Authority" is defined as that term
21 is defined under Section 602(9) of the Cable Communications
22 Policy Act of 1984, Public Law 98-549, but does not include
23 any municipality with a population of 1,000,000 or more.

24 (iv) "Cable operator" is defined as that term is
25 defined under Section 602(4) of the Cable Communications
26 Policy Act of 1984, Public Law 98-549.

27 Before granting an additional cable television franchise,
28 the franchising authority shall:

29 (1) Give written notice to the owner or operator of any
30 other community antenna television system franchised to
31 serve all or any portion of the territorial area to be
32 served by such additional cable television franchise,
33 identifying the applicant for such additional franchise
34 and specifying the date, time and place at which the
35 franchising authority shall conduct public hearings to
36 consider and determine whether such additional cable

1 television franchise should be granted.

2 (2) Conduct a public hearing to determine the public
3 need for such additional cable television franchise, the
4 capacity of public rights-of-way to accommodate such
5 additional community antenna television services, the
6 potential disruption to existing users of public
7 rights-of-way to be used by such additional franchise
8 applicant to complete construction and to provide cable
9 television services within the proposed franchise area,
10 the long term economic impact of such additional cable
11 television system within the community, and such other
12 factors as the franchising authority shall deem
13 appropriate.

14 (3) Determine, based upon the foregoing factors,
15 whether it is in the best interest of the municipality to
16 grant such additional cable television franchise.

17 (4) If the franchising authority shall determine that
18 it is in the best interest of the municipality to do so, it
19 may grant the additional cable television franchise.
20 Except as provided in paragraph (5) of this subsection (e),
21 no such additional cable television franchise shall be
22 granted under terms or conditions more favorable or less
23 burdensome to the applicant than those required under the
24 existing cable television franchise, including but not
25 limited to terms and conditions pertaining to the
26 territorial extent of the franchise, system design,
27 technical performance standards, construction schedules,
28 performance bonds, standards for construction and
29 installation of cable television facilities, service to
30 subscribers, public educational and governmental access
31 channels and programming, production assistance, liability
32 and indemnification, and franchise fees.

33 (5) Unless the existing cable television franchise
34 provides that any additional cable television franchise
35 shall be subject to the same terms or substantially
36 equivalent terms and conditions as those of the existing

1 cable television franchise, the franchising authority may
2 grant an additional cable television franchise under
3 different terms and conditions than those of the existing
4 franchise, in which event the franchising authority shall
5 enter into good faith negotiations with the existing
6 franchisee and shall, within 120 days after the effective
7 date of the additional cable television franchise, modify
8 the existing cable television franchise in a manner and to
9 the extent necessary to ensure that neither the existing
10 cable television franchise nor the additional cable
11 television franchise, each considered in its entirety,
12 provides a competitive advantage over the other, provided
13 that prior to modifying the existing cable television
14 franchise, the franchising authority shall have conducted
15 a public hearing to consider the proposed modification. No
16 modification in the terms and conditions of the existing
17 cable television franchise shall oblige the existing cable
18 television franchisee (1) to make any additional payment to
19 the franchising authority, including the payment of any
20 additional franchise fee, (2) to engage in any additional
21 construction of the existing cable television system or,
22 (3) to modify the specifications or design of the existing
23 cable television system; and the inclusion of the factors
24 identified in items (2) and (3) shall not be considered in
25 determining whether either franchise considered in its
26 entirety, has a competitive advantage over the other except
27 to the extent that the additional franchisee provides
28 additional video or data services or the equipment or
29 facilities necessary to generate and or carry such service.
30 No modification in the terms and conditions of the existing
31 cable television franchise shall be made if the existing
32 cable television franchisee elects to continue to operate
33 under all terms and conditions of the existing franchise.

34 If within the 120 day period the franchising authority
35 and the existing cable television franchisee are unable to
36 reach agreement on modifications to the existing cable

1 television franchise, then the franchising authority shall
2 modify the existing cable television franchise, effective
3 45 days thereafter, in a manner, and only to the extent,
4 that the terms and conditions of the existing cable
5 television franchise shall no longer impose any duty or
6 obligation on the existing franchisee which is not also
7 imposed under the additional cable television franchise;
8 however, if by the modification the existing cable
9 television franchisee is relieved of duties or obligations
10 not imposed under the additional cable television
11 franchise, then within the same 45 days and following a
12 public hearing concerning modification of the additional
13 cable television franchise within that 45 day period, the
14 franchising authority shall modify the additional cable
15 television franchise to the extent necessary to insure that
16 neither the existing cable television franchise nor the
17 additional cable television franchise, each considered in
18 its entirety, shall have a competitive advantage over the
19 other.

20 No municipality shall be subject to suit for damages based
21 upon the municipality's determination to grant or its refusal
22 to grant an additional cable television franchise, provided
23 that a public hearing as herein provided has been held and the
24 franchising authority has determined that it is in the best
25 interest of the municipality to grant or refuse to grant such
26 additional franchise, as the case may be.

27 It is declared to be the law of this State, pursuant to
28 paragraphs (h) and (i) of Section 6 of Article VII of the
29 Illinois Constitution, that the establishment of minimum
30 standards and procedures for the granting of additional cable
31 television franchises by municipalities with a population less
32 than 1,000,000 as provided in this subsection (e) is an
33 exclusive State power and function that may not be exercised
34 concurrently by a home rule unit.

35 (f) No municipality may acquire, construct, own, or operate
36 a community antenna television system unless the corporate

1 authorities adopt an ordinance. The ordinance must set forth
2 the action proposed; describe the plant, equipment, and
3 property to be acquired or constructed; and specifically
4 describe the manner in which the construction, acquisition, and
5 operation of the system will be financed.

6 The ordinance may not take effect until the question of
7 acquiring, construction, owning, or operating a community
8 antenna television system has been submitted to the electors of
9 the municipality at a regular election and approved by a
10 majority of the electors voting on the question. The corporate
11 authorities must certify the question to the proper election
12 authority, which must submit the question at an election in
13 accordance with the Election Code.

14 The question must be submitted in substantially the
15 following form:

16 Shall the ordinance authorizing the municipality to
17 (insert action authorized by ordinance) take effect?

18 The votes must be recorded as "Yes" or "No".

19 If a majority of electors voting on the question vote in
20 the affirmative, the ordinance shall take effect.

21 Not more than 30 or less than 15 days before the date of
22 the referendum, the municipal clerk must publish the ordinance
23 at least once in one or more newspapers published in the
24 municipality or, if no newspaper is published in the
25 municipality, in one or more newspapers of general circulation
26 within the municipality.

27 (Source: P.A. 90-285, eff. 7-31-97; 91-648, eff. 1-1-00.)